

Northwest Indian Fisheries Commission

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July 11, 2003

The Honorable Donald Evans
Secretary of Commerce
1401 Constitution Avenue
Washington, DC 20230

Dear Mr. Evans:

We would like to present to you the Northwest Indian Fisheries Commission (NWIFC) Tribal Policy Statement on Marine Protected Areas, Marine Reserves, Marine Sanctuaries, and Fishery Conservation Zones. This statement is the result of numerous discussions between our member tribes, each of who are party to the *United States v. Washington* litigation. This historic litigation clarified the tribes rights as co-managers with the state of Washington to our shared marine Usual and Accustomed Fishing Areas. Tribes and the state of Washington have since developed a cooperative framework which supports decision-making on fisheries management and habitat protection.

We prepared this statement so there would be a clear understanding of the tribe's policy on marine protection efforts. The tribes are concerned about how marine resource planning and conservation efforts are presently being undertaken by federal, state and local entities with no apparent regard for tribal interests, or the likelihood that this will result in significant conflict. Because tribes have established rights and shared responsibilities, it is essential that marine conservation goals and management standards be established that protects those interests.

Tribes have lived in the Northwest since time immemorial and co-evolved with the region's marine resources. Tribal presence and use of marine resources are a part of the natural ecosystem and ecosystem processes. The federal government has a trust responsibility to protect these rights and any impacts must be addressed through government to government dialog and consultations. Tribes must be involved in all federal, state, or local planning for marine areas.

Tribes have become increasingly concerned about geographic rather than comprehensive and scientific attempts to manage uses of marine areas. Because tribal rights are place oriented, tribes can not simply move around. Marine protected areas could deprive tribes of their livelihood and way of life. This is not speculation, as tribes have already witnessed situations where their rights have been challenged by ill-conceived plans and efforts.

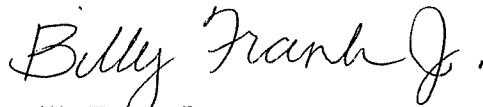
For tribes the issue of marine protected areas is complex. Tribal people consider themselves stewards of the marine environment and place marine conservation as a critical priority. A well known statement made by a Makah tribal elder during the negotiation of the Treaty of Neah Bay regarding agricultural development was "the water is our land". The health, well-being and subsistence lifestyle of Indian people in the Pacific Northwest always has been, and will continue to be, heavily dependent on a productive marine ecosystem. Coupled with that, is the inseparable fact that tribal access to treaty reserved marine resources is central to their survival.

We strongly urge you to consider where the tribes are on this issue. We strongly believe that government to government dialog is essential, and that by working together, the marine areas can be protected and the treaty rights and trust responsibility upheld to the highest fiduciary standard.

Finally, it must be noted that each tribal government is a sovereign entity, and may choose to develop their own statement regarding marine resource initiatives. This statement from the NWIFC should be read as supporting these tribal specific statements, as it is appropriately that each tribe represents their unique geographic, social, cultural, economic and legal interests.

We stand ready to discuss our position with you and your agencies, and look forward to hearing from you on how to begin this effort.

Sincerely,

A handwritten signature in black ink that reads "Billy Frank, Jr." in a cursive, flowing script.

Billy Frank, Jr.
Chairman

cc: NWIFC Member Tribes
Washington State Congressional Delegation
William Hogarth, PhD, NOAAF
Richard W. Spinrad, PhD, NOS
Daniel Basta, Director, NMSP
Aureen Martin, AS-IA, DOI
Craig Manson, AS-FWP, DOI
Stan Speaks, BIA Regional Director
David Allen, Regional Director, Fish and Wildlife Service
Bill Laitner, Superintendent Olympic National Park
Fran Mainella, Director, National Park Service
Carol Bernthal, Olympic Marine Sanctuary
Northwest Straits Commission
Governor Gary Locke
Puget Sound Action Team
Washington Department of Natural Resources
Washington Department of Ecology
Washington Department of Fish and Wildlife
Washington Fish and Wildlife Commission

TRIBAL POLICY STATEMENT
MARINE PROTECTED AREAS, MARINE RESERVES,
MARINE SANCTUARIES, and FISHERY CONSERVATION ZONES
JUNE 26, 2003

Introduction and Purpose

It is important for tribes to be involved in all federal state or local planning for marine protected areas, not only at the inception, but also at every stage thereafter. This is because the tribes have an integral role to play in resource management, legally, culturally, and economically. The Tribes have used and protected the region's marine resources for thousands of years and continue to be leaders in fisheries management today. Western Washington Indian tribes have treaty-reserved fishing rights in the marine waters within Puget Sound and off the Washington Coast. Tribal governments have exclusive management authority and responsibility for marine resources on their reservations. Through a number of intergovernmental forums, they participate in decisions regarding harvestable numbers and the potential need for conservation in certain fisheries. This is because tribal governments share co-management authority and responsibility for marine resources in their usual and accustomed fishing areas with State of Washington and/or the federal government depending on the specific resource and area identified. For this reason, it is essential that both conservation goals and standards for marine resource management are established through government-to-government consultations between the co-managers and with other state and/or federal agencies as appropriate. The regulation of tribal activities under a MPA is only appropriate if it is a reasonable and necessary conservation measure, does not discriminate against a tribe's reserved right to harvest resources, regulation of non-tribal activities alone will not meet the conservation needs and the tribe's own conservation measures are insufficient to meet the conservation needs. When proven necessary, in accordance with *United States v. State of Washington*, 384 F. Supp. 312 (W.D. Wash---1974), tribal governments will adopt conservation regulations that regulate their own member's fishing activities.

Marine protected areas, marine reserves, marine sanctuaries, and fishery conservation zones (time and area closures), may have many names and varied purposes, but in this policy, we will refer to them collectively as MPAs. Any relevant government agency or regulatory body may propose MPAs in the tribes' Usual and Accustomed fishing areas (U & As), but they cannot and must not be implemented without first, initiating and second, continuing consultation with the affected tribes. When a MPA is established in an off-reservation U&A, tribal governments have the right to regulate tribal activities consistent with the goals of the MPA. Tribal co-management of MPAs should be considered where it is appropriate and desired and include tribal regulation of tribal activities and enforcement authority within U & As. This makes it essential that any proponent contact each tribe who's U & As would be affected by the proposed MPA.

This is necessary because any proposal that restricts a tribe's access to a marine resource is a diminishment of its treaty right and cannot be imposed without its consent.

Policy Statement

The Tribes have lived in the Northwest since time immemorial and have co-evolved with this region's marine resources. Our presence and use of marine resources are part of the natural ecosystem and ecosystem processes. We support and insist that the marine resources of the Northwest, on which we depend for sustaining our culture, communities, and livelihoods, be managed and sustained for future generations.

Because of the impact that conservation measures can have on tribal economics, culture, and subsistence; the creation of MPAs should not be the "goal" in the absence of a demonstrated need for conservation. In the face of such demonstrated need, MPAs may be useful tools to sustain and/or conserve specific marine resources. However, MPAs are only one of the many possible management tools or alternatives that might effectively be used to sustain and conserve marine resources. MPAs must not be used as a substitute for sound, sustainable management of marine resources, or, the restoration of marine or freshwater habitats and water quality throughout Puget Sound and the Washington Coast. Nor should MPAs be used to disguise the allocation of marine resources.

The first step in defining which management measures are necessary to conserve a specific marine resource is to define the problem that needs to be addressed. The next step is to determine the scientific methods for resolution. Then, alternative management actions, including MPAs, need to be evaluated with regard to their effectiveness at addressing the problem identified. Proposals need to list problems, potential solutions, and the long-term vision for the specific marine resource(s). In evaluating any management alternative to address a defined problem, ancillary benefits that may be derived from application of the measure should be considered.

We will work with the appropriate state and federal agencies to maintain a leadership role in the evaluation and application of MPAs as management tools. To the extent these actions are necessary to address a resource problem, the Tribes must be involved in the decision and will be responsible for regulating activities by tribal members. In the end, these management actions must acknowledge treaty rights and accommodate the traditional relationship that the Tribes have had with marine resources.

General assessment framework

Any proposed MPA, whether for habitat or harvest protection, must be evaluated for consistency with the goals and objectives of the existing management plans for the specific marine resource (population, species, species assemblage, or marine community). These proposed regulations must be evaluated by the affected and applicable co-managers in context with all the other management tools available to achieve resource objectives and must demonstrate unequivocally to the tribes that the MPA is a necessary conservation measure. Because any proposed action that restricts harvest or access would be a diminishment of the tribes' treaty rights, a proposed MPA

must be evaluated in the context of all other regulatory alternatives that might achieve the same conservation principle without diminishing any Tribe's treaty rights.

Any MPA proposal should address at least the following elements:

- 1) What is the threat, problem, or situation that is triggering the proposal for a MPA? (The scope of any proposed action must be appropriate to the defined problem.) Describe the affected resource/species.
- 2) What is the current status of the resource and what is the desired future status (goals and objectives) that will result from the proposed management action? Over what period of time is the resource expected to move from the current status to the desired future status?
- 3) What are the specific goals and objectives identified for the proposed affected area (including the anticipated time periods over which the goals and objectives will be achieved)?
- 4) Is the scientific information sufficient to determine need and an appropriate response?
 - ▶ If not, what research is needed to complete the picture before a decision is made regarding the resource? And as corollaries: what funding is necessary to perform this research? Who should undertake it? Who are the appropriate partners?
- 5) Which marine resource(s) is targeted by the research or recovery proposal?
 - ▶ As corollaries: What are the identified factors for decline? How does the proposal address the identified factors for decline? Will it lead to means for recovery? Will it be on-the-ground gathering of empirical evidence or will it be use of models?
- 6) How does this proposal fit in with harvest management plans and habitat management plans (for upland, nearshore, and deepwater areas) related to the targeted resource?
- 7) What other alternatives, voluntary or regulatory, will achieve the same goals and objectives (identified in response to question no. 2 above) with less impact on Tribe's exercising their treaty rights?
- 8) How will progress be monitored and "success" be measured? Who will conduct these monitoring and evaluation activities?
- 9) How will adaptive management be utilized to modify the goals and objectives of the MPA?
- 10) Who are the parties that make the decisions? On what basis?